



Docket No.: 248157US77DIV

COMMISSIONER FOR PATENTS  
ALEXANDRIA, VIRGINIA 22313



ATTORNEYS AT LAW

RE: Application Serial No.: 10/765,072  
Applicants: Jianmin QIAO  
Filing Date: January 28, 2004  
For: DUAL DAMASCENE STRUCTURE AND METHOD  
OF MAKING  
Group Art Unit: 2813  
Examiner: SCHILLINGER, L.

SIR:

Attached hereto for filing are the following papers:

**Response to Election of Species Requirement (3 pp.)**

Our check in the amount of \$0.00 is attached covering any required fees. In the event any variance exists between the amount enclosed and the Patent Office charges for filing the above-noted documents, including any fees required under 37 C.F.R. 1.136 for any necessary Extension of Time to make the filing of the attached documents timely, please charge or credit the difference to our Deposit Account No. 15-0030. Further, if these papers are not considered timely filed, then a petition is hereby made under 37 C.F.R. 1.136 for the necessary extension of time. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, P.C.  
Norman F. Oblon

Corwin P. Umbach, Ph.D.

Registration No. 40,211

Customer Number

**22850**

(703) 413-3000 (phone)  
(703) 413-2220 (fax)

DOCKET NO: 248157US77DIV



IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF :  
JIANMIN QIAO : EXAMINER: SCHILLINGER, L.  
SERIAL NO: 10/765,072 :  
FILED: JANUARY 28, 2004 : GROUP ART UNIT: 2813  
FOR: DUAL DAMASCENE STRUCTURE :  
AND METHOD OF MAKING

RESPONSE TO ELECTION OF SPECIES REQUIREMENT

COMMISSIONER FOR PATENTS  
ALEXANDRIA, VIRGINIA 22313

SIR:

In response to the Election of Species Requirement dated March 30, 2005, Applicants hereby elect, with traverse, to initially prosecute Species I. Claim 11 reads on Species I.

Applicants respectfully traverse the Election of Species Requirement as improper, because the Requirement does not support the Requirement's conclusion that an election of species is necessary. The Requirement simply states the conclusion that

This application contains claims directed to the following patentably distinct species of the claimed invention: Species I, claim 11 ...; Species II, claims 12 and 14, ...; Species III, claims 15 and 17 ...". Election of Species Requirement dated March 30, 2005, at page 2, lines 1-11.

However,

Examiners must provide reasons and/or examples to support conclusions .... M.P.E.P. §803, page 800-4, column 1.

The particular reasons relied upon by the Examiner for holding that the inventions as claimed are either independent or distinct should be concisely stated. A mere statement of conclusion is inadequate. M.P.E.P. §816, page 800-56.

The burden of proof is on the Patent Office to support a conclusion that there is a need for an election of species. Because the Patent Office has provided no evidence that an election of species is necessary, the Election of Species Requirement is improper and should be withdrawn.

The Election of Species Requirement is also improper because there would be no serious burden on the Patent Office to examine all of the present claims.

If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinction inventions.  
M.P.E.P. §803, page 800-4, column 1.

The Patent Office has provided no explanation of separate classification, or separate status in the art, or a different field of search to support the Election of Species Requirement. See, M.P.E.P. § 803, page 800-4, column 1. Applicants submit that a search of Species I would include a search of the same references as a search of Species II and III, because the inventions claimed in Species I, II and III all relate to an etch chemistry containing  $C_2H_2F_4$ .

An etch chemistry containing  $C_2H_2F_4$  (and optionally  $CHF_3$ ) provides sufficient etch selectivity between undoped silicon oxide and various doped oxides for the undoped silicon oxide to act as an etch stop layer (or vice versa). Specification at page 4, lines 12-14.

Because the subject matter of Species I, II and III is sufficiently related that a search of any one species would encompass a search of the subject matter of the remaining species, Applicants submit that there would be no serious burden on the Patent Office to examine all of the present claims. For this additional reason, the Election of Species Requirement is improper and should be withdrawn.

Application No. 10/765,072  
Reply to Election of Species Requirement of March 30, 2005.

Applicants respectfully submit that the above-identified application is now in  
condition for examination on the merits.


Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, P.C.  
Norman F. Oblon

Customer Number

**22850**

Tel: (703) 413-3000  
Fax: (703) 413 -2220  
(OSMMN 06/04)  
CPU/rac

  
Corwin P. Umbach, Ph..D.  
Registration No. 40,211